

James Kohler *AK*
8/3/07

From: Pam Grubaugh-Littig
To: ddragoo@swlaw.com; drew@co.emery.ut.us; james kohler; Jim Allen; jma...
Date: 8/3/2007 5:07 PM
Subject: Compliance with Permit Conditions - Lila Canyon
Attachments: 20070803161512.pdf

Here is the Division letter that addresses UEI compliance with the permit conditions for the Lila Canyon Extension.



JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil Gas and Mining

JOHN R. BAZA
Division Director

August 3, 2007

Jay Marshall, Resident Agent
Utah American Energy Inc.
P.O. Box 986
Price, Utah 84501

Subject: Compliance with Permit Conditions – Lila Canyon Extension, Utah American Energy, Inc. (UEI), Horse Canyon Mine, C/007/0013, Outgoing File

Dear Mr. Marshall:

The permit for the Lila Canyon Extension of the Horse Canyon Mine was issued on May 18, 2007. Corrected stipulations "Attachment A - Special Conditions" of May 31, 2007 were issued on May 31, 2007. The Division further clarifies the stipulations as attached - "Attachment A - Special Conditions, August 3, 2007."

Ms. Denise Dragoo's letter of June 28, 2007 asserted compliance with the corrected permit stipulations of May 31, 2007. The Division has reviewed that material and has determined that UEI has complied with all but one subpart of Condition # 3 and added a Condition #4. Condition #3 was re-numbered and re-worded in some areas to clearly identify them as ongoing conditions of the permit. Subpart 3.f. has not been met by UEI and thus has been reworded to better clarify what is needed in the Mining and Reclamation Plan (MRP). Please submit the map for compliance for subpart 3.f. by September 4, 2007.

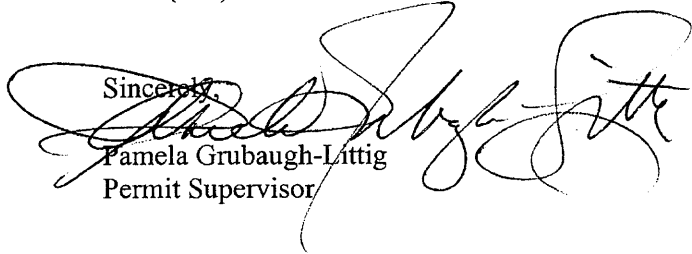
The Southern Utah Wilderness Alliance (SUWA) has drawn our attention to another permit condition that was expressed in the technical analysis document, but not restated in the May 31, 2007 condition list. Because Emery County Road EC 126 passes within 100 feet of the proposed coal mining and reclamation operations, the Division or its designee must provide an opportunity for a public hearing. The Technical Analysis stated "There was no notice of the public road within 100 feet of the permit area. Before construction of the mine may begin, the Permittee must also comply with the requirements of R645-103-234.200 through R645-103-234.300 and provide opportunity for a public hearing. The Division will require this as a condition to the permit." The Division regrets that this condition was not specifically repeated in its earlier letter, and will work with UEI to satisfy this condition as quickly as possible. This is clarified as Condition #4.

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Also, this letter is notification that when UEI intends to begin work on site, then operational water monitoring should begin within this quarter.

If you have any questions, please call me at (801) 538-5268.

Sincerely,



Pamela Grubaugh-Littig
Permit Supervisor

Attachments

cc: Denise Dragoo, Snell & Wilmer, w/attachments
Ranvir Singh, OSM, w/ attachments
Jim Kohler, BLM, w/attachments
Stephen Bloch, SUWA, w/attachments
Drew Sitterud, Emery County, w/attachments

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complianceandclarificationletteraugust32007.doc

Attachment A

SPECIAL CONDITIONS (Clarified – August 3, 2007)

1. UtahAmerican Energy, Inc (UEI) will submit water quality data for the Horse Canyon Mine, in an electronic format through the Electronic Data Input web site, <http://hlunix.hl.state.ut.us/cgi-bin/appx-ogm.cgi>. **(This condition is ongoing.)**
2. UEI may not conduct coal development or mining operations on federal coal leases SL-066145, SL-066490, SL-069291, U-0126947, U-014217, and U-014218 until Secretarial approval of the mining plan has been obtained. **(This condition has been met.)**
3. May 31, 2007 condition: *Within 30 days of permit issuance, UEI must incorporate into their Mining and Reclamation Plan (MRP) the following:*

Numbered August 3, 2007:

- The introduction to Condition #3 (Within 30 days of permit issuance) is no longer applicable. Condition #3 has been numbered and re-worded in some areas to clearly identify them as met or ongoing conditions.

May 31, 2007 condition:

- *UEI must commit in the MRP to report actual annual water depletions to OSM through the Division by September 30 of each year. UEI must also provide a statement acknowledging that OSM could reinstate Section 7 and develop new protection alternatives in the event that the Recovery Program is unable to implement recovery plans for the fishes in a timely manner.*

Numbered August 3, 2007:

- 3.a. UEI must commit in the MRP to report actual annual water depletions to OSM through the Division by September 30 of each year. UEI must also provide a statement acknowledging that OSM could reinstate Section 7 and develop new protection alternatives in the event that the Recovery Program is unable to implement recovery plans for the fishes in a timely manner. **(This condition has been met.)**

May 31, 2007 condition:

- *UEI must clarify information in the Environmental Cultural Resource section of the MRP-Part B including information on the following: Programmatic Agreement, protection of listed sites, direct/indirect impact, and cultural or historic sites within the permit and surrounding area.*

Reworded and numbered August 3, 2007:

- 3.b. UEI will follow the Programmatic Agreement if cultural resource sites are discovered within the permit or adjacent areas. **(This condition is ongoing.)**
(Explanation: The commitment on p. 12 Section 411.142 of the MRP is confusing to the reader because it commits UEI to protection measures only in the consultation process.)

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- *UEI must move Appendix X-1 and X-2 from the MRP-Part A Volume IV to the Confidential File.*

Numbered August 3, 2007:

- 3.c. *UEI must move Appendix X-1 and X-2 from the MRP-Part A Volume IV to the Confidential File. (This condition has been met.)*

May 31, 2007:

- *UEI has already agreed to conduct yearly fly-over raptor surveys starting in 2005 (Sections 322.220 (pg 10) and 330 (pg 18) Chapter 3 MRP-Part B). In addition, UEI must refer to the mining map overlaid with potential cliff habitat (Plates 5-3 and 5-5 MRP-Part B) for guidance. This yearly raptor survey program will provide pre-construction baseline and post-disturbance data sufficient to determine or update protection plans or enhancement/mitigation measures as operations change. As part of this yearly raptor survey requirement, UEI must submit all results of the raptor fly-over surveys to the Division in Annual Reports and must immediately contact the Division, BLM, and USFWS following any raptor survey that shows that eagles are tending nests or nesting within the surveyed area. The agencies will immediately coordinate to determine if UEI must implement appropriate measures. If the agencies recommend mitigation, UEI must submit mitigation plans to the Division for incorporation into Appendix 3 of the MRP-Part B. These provisions must be included in Section 358.100 (Chapter 3 MRP-Part B) as a complement to the existing commitment on page 38 (Chapter 3 MRP-Part B) as well as in Section 333.300 (Chapter 3 MRP-Part B) as part of the existing "protection" list. (R645-301-322.100, -322.220)*

Reworded and numbered August 3, 2007:

- 3.d. UEI will: 1) provide for conducting yearly fly-over raptor surveys. 2) immediately contact UDOGM, USFWS, UDWR and BLM if raptors are tending nests or are nesting in areas near the area to be mined (mining in the subsidence zone and below the cliffs next to the subsidence zone) in the current nesting season or in the coming nesting season (the following year). 3) implement the Best Technology Available (BTA) to provide for the protection of the raptors and their nests. This BTA will be determined by the agencies and then implemented by UEI. Implementation of BTA measures may include fencing of the nests, or avoidance of the area and/or may also include the need to apply for a 'take' permit from USFWS. 4) provide a complete report of the yearly surveys to UDOGM. (This condition is ongoing.)

May 31, 2007:

- *UEI has already agreed to adhere to raptor exclusionary periods. The provisions in this condition, however, provide additional protection measures in the event of unforeseen changes in construction or mine plans, or in the case of emergency situations that may force UEI to conduct activity near or within the 0.5 mile buffer zone of raptor nest and during raptor exclusionary periods (February 1 to July 15 for golden eagles). The MRP-Part B must include a provision that states that, in the event of unforeseen events, UEI will immediately contact the Division, BLM, DWR, and USFWS. The agencies will immediately coordinate to determine appropriate measures that may include: 1) conducting ground surveys, in*

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coordination with DWR, to confirm if birds are tending nests or are nesting and possibly determine the life stage of the offspring; 2) developing a mitigation plan, in coordination with the agencies, for possible impacts to nests or birds; or 3) ceasing operations until the end of breeding season to avoid 'take'. If the agencies recommend surveys, UEI must submit all survey results to the Division in Annual Reports. If the agencies recommend mitigation, UEI must submit all mitigation plans to the Division for incorporation into Appendix 3 of the MRP-Part B. These provisions must be included in Section 358.100 (Chapter 3 MRP-Part B) as a complement to the existing commitment on page 38 (Chapter 3 MRP-Part B) as well as in Section 333.300 (Chapter 3 MRP-Part B) as part of the existing "protection" list. (R645-301-322.100, -322.220)

Numbered August 3, 2007:

- 3.e. UEI has already agreed to adhere to raptor exclusionary periods. The provisions in this condition, however, provide additional protection measures in the event of unforeseen changes in construction or mine plans, or in the case of emergency situations that may force UEI to conduct activity near or within the 0.5 mile buffer zone of raptor nest and during raptor exclusionary periods (February 1 to July 15 for golden eagles). The MRP-Part B must include a provision that states that, in the event of unforeseen events, UEI will immediately contact the Division, BLM, DWR, and USFWS. The agencies will immediately coordinate to determine appropriate measures that may include: 1) conducting ground surveys, in coordination with DWR, to confirm if birds are tending nests or are nesting and possibly determine the life stage of the offspring; 2) developing a mitigation plan, in coordination with the agencies, for possible impacts to nests or birds; or 3) ceasing operations until the end of breeding season to avoid 'take'. If the agencies recommend surveys, UEI must submit all survey results to the Division in Annual Reports. If the agencies recommend mitigation, UEI must submit all mitigation plans to the Division for incorporation into Appendix 3 of the MRP-Part B. These provisions must be included in Section 358.100 (Chapter 3 MRP-Part B) as a complement to the existing commitment on page 38 (Chapter 3 MRP-Part B) as well as in Section 333.300 (Chapter 3 MRP-Part B) as part of the existing "protection" list. (R645-301-322.100, -322.220) **(This condition has been met.)**

May 31, 2007:

- *UEI must clearly illustrate the number of all raptor nests (not just golden eagle) within the subsidence zone. If the mining plan shows that there are one or more raptor nests located within the subsidence zone, UEI must provide a mitigation plan for possible subsidence of the nest(s). UEI must coordinate with the Division, DWR, USFWS, and BLM to develop a mitigation plan. The plan must include the name of the lead agency, proposed date of implementation, a reporting mechanism, as well as the mitigation proposal. The MRP-Part B must include a provision that states UEI will apply for a nest 'take' permit, through the USFWS, if the mitigation plan includes preventing raptors from accessing nests. UEI must apply for 'take' permits 6-12 months prior to potentially subsiding nests. UEI must submit all mitigation plans and final reports to the Division for incorporation into Appendix 3 of the MRP-Part B. These provisions must be included in Section 358.100 (Chapter 3 MRP-Part B) as a complement to the*

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existing commitment on page 38 (Chapter 3 MRP-Part B) as well as in Section 333.300 (Chapter 3 MRP-Part B) as part of the existing "protection" list. (R645-301-322.100, -322.220)

Reworded and numbered August 3, 2007:

- 3.f. UEI must provide a new map at a scale of 1:500, showing all raptor nests (including but not limited to golden eagle, falcon and raven) within the subsidence zone and also those that are down slope from the subsidence zone where rock falls may occur as a result of subsidence. The main area of concern is in the west half of sections 15 and 22 and the east half of sections 14 and 23. The map must have a legend showing: • the permit area, • maximum extent of subsidence, • areas where spalling could occur (cliffs) nests for all raptors in various states such as dilapidated, inactive, tended and active, • north arrow, • scale, • confidential, • township, range and section. In addition, the nest must be plotted to show the exact location.

(Explanation: If Plate 5-3 Confidential is blown up to a scale of 1:500 then the symbols for the nests are so large that the nest location symbol covers an area of 300 feet by 300 feet. Thus, merely providing a 'blown-up' map of plate 5-3 is not acceptable.) **(This condition is NOT met as of August 3, 2007.)**

May 31, 2007:

- *Corresponding to subsidence and raptors, UEI must remove the conflicting information on pages 10 and 16/17 of Chapter 3 MRP-Part B. The statement on page 10 (Chapter 3 MRP-Part B) discusses that a nest may be subsided, which conflicts with the commitment on page 16/17 (Chapter 3 MRP-Part B) that states, "First seam mining (Leaving the pillars) should adequately protect existing raptor nests from subsidence". (R645-301-121.200)*

Numbered August 3, 2007:

- 3.g. Corresponding to subsidence and raptors, UEI must remove the conflicting information on pages 10 and 16/17 of Chapter 3 MRP-Part B. The statement on page 10 (Chapter 3 MRP-Part B) discusses that a nest may be subsided, which conflicts with the commitment on page 16/17 (Chapter 3 MRP-Part B) that states, "First seam mining (Leaving the pillars) should adequately protect existing raptor nests from subsidence". (R645-301-121.200) **(This condition has been met.)**

August 3, 2007:

4. There was no notice of the opportunity for public hearing to determine whether the interests of the public and affected landowners would be protected for the public road that exists within 100 feet of the proposed coal mining and reclamation operation. Therefore, before construction of the mine may begin, UEI must comply with the requirements of R645-103-234.200 through R645-103-234.300 by providing an opportunity for a public hearing. (This condition has not been met.)